IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 8125 of 2007(P)

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AGAINST THE ORDER IN EP 393/04 IN
OS.1210/2001 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

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V.C.BALACHANDRAN,VELIYATH HOUSE,
KOORKKANCHERRY VILLAGE&DESOM,THRISSUR TALUK AND
DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:

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1. M/S.DELUX KURIES & LOANS (P) LTD.,
H.O SAKTHAN THAMPURAM NAGAR SHOPPING COMPLEX,
THRISSUR,S.T NAGAR,THRISSUR VILLAGE,THRISSUR
TALUK,THRISUR DISTRICT.

2. JOY K.DANIEL,KANNAMBUZHA HOUSE,
CHEMBUKKAVU VILLAGE & DESOM,THRISSUR TALUK,
THRISSUR DISTRICT.

3. K.C.DAVIS,KANJIRATHINKAL HOUSE,
MANNUTHY DESOM,OLLUKKARA VILLAGE,THRISSUR TALUK
&DISTRICT

BY ADV. SRI.JIJO PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/07/2007, ALONG WITH CRP NO. 270 OF 2007 THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 8125/07

PETITIONERS EXTS:

EXT.P1: PHOTOCOPY OF THE OBJECTION DT.6.10.2004 FILED BY THE PETITIONER

EXT.P2: -DO- OF THE ORDER DT. 20.2.07 IN E.P.393/04 OF THE SUB COURT, THRISSUR

jj /TRUE COPY/

P.A.TO JUDGE

**M.N.KRISHNAN, J.**

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**WP(C)No.8125/07 & C.R.P.270/07**

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**Dated this the 11th July, 2007.**

**JUDGMENT**

This writ petition and civil revision petition are preferred against the order of the Subordinate Judge, Thrissur in E.P.393/04. The first respondent in the execution petition has filed the C.R.P and the second respondent in the execution petition has filed the writ petition. The suit is decreed for an amount of Rs.1,55,993/-. According to the decree holder the first respondent is running an electrical shop by name Joy Lights and he is owning a house worth Rs.40 lakhs and his monthly income is about Rs.20,000/-. As far as the second respondent is concerned, according to the decree holder, he is a real estate businessman having a monthly income of Rs.18,000/- and he is residing in a house worth Rs.32 lakhs. The second respondent in the evidence would contend that he has no business. He is living with his mother and his mother is looking after his wife and children. The mother is aged 85 years and one cannot believe that an able bodied man will sit idle and try to live on the earning of an 85 year old mother. So far as the first respondent is concerned he also deposes that he has no income at all. But as law stands, the burden is on the decree holder to

prove the means of the judgment debtor. As far as the first respondent is concerned since the decree holder submits that he is having an electrical business positive evidence can be adduced, if it is available and one cannot expect the judgment debtor to prove the negative. Similarly positive evidence can be adduced to show about the means of second respondent as well and the area where he resides and whether there is any income from the property where he resides because even according to him the property belonged to the father and the father is dead and so naturally he will be a person succeeding to the property. But the mere oral evidence of P.W.1 is not sufficient to prove the means. Therefore, the order under challenge so far as it relates to respondents 1 and 2 are set aside and the matter is remitted back to the executing court and the court below is directed to permit both parties to adduce evidence in support of their respective contentions including documentary evidence and dispose of the matter in accordance with law. I also direct the court below to disburse the amount to the decree holder which has been deposited by the judgment debtor because I do not find that they have no means but I find that there is lack of evidence to prove the plea of means. So the decree holder will be at liberty to withdraw that amount. The matter be

disposed of as expeditiously as possible and not later than three months from today and they are directed to appear before the court below on 10.8.2007.

**M.N.KRISHNAN**
**Judge**

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